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property through the mistake in performance is said to be under an equitable obligation, broadly termed a constructive trust, to convey it to the other contracting party.<sup>3</sup> Where, as might be true in the principal case, the writing has omitted land comprised in a prior oral agreement, some courts have refused to compel reformation, on the ground that they would be enforcing specific performance in the teeth of the Statute of Frauds.<sup>4</sup> But in all these cases mistake, and not a contractual right of specific performance, is the basis of equitable relief.<sup>5</sup> Business understanding and convenience, to be sure, forbid that mistake or surprise should always give rise to an equity. But the retention of property or of a written contract may at least, in the circumstances noted, be fastened upon as an unjust enrichment, analogous to that arising from actual fraud.

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POWER OF STATE TO EXCLUDE FOREIGN CORPORATIONS. — The growing hostility towards corporations, especially those engaged in inter-state business, has led to highly restrictive regulations and, frequently, total exclusion by states of certain classes of foreign corporations.<sup>1</sup> This renders timely a brief inquiry, in a recent article, into the limitations upon this power of a state. *Upon the Power of One State to Exclude the Corporations of Another*, by Eugene F. Ware in 17 Green Bag 699.

A corporation is a creature of local law and cannot exist outside of the state of its creation. Yet, like a natural person, it may act elsewhere through agents. Whether a state will recognize the existence of a foreign corporation and permit it to do business therein is determined solely by the laws of that state. The common law, however, has generally recognized a foreign corporation.<sup>2</sup> But, in the absence of constitutional limitations, the state has an undoubted right to regulate or exclude foreign corporations.<sup>3</sup> To the Constitution, then, we must look for the curtailment of a state's right of control over foreign corporations. That a corporation is not entitled to the privileges of "citizens" under Article IV, sec. 2, is settled.<sup>4</sup> And, although a corporation is a "person" within sec. 1 of the Fourteenth Amendment, forbidding the denial of the equal protection of the laws "to any person within the jurisdiction,"<sup>5</sup> this does not prevent a state from imposing conditions to the admission into the jurisdiction of a foreign corporation, and a state may discriminate against different foreign corporations in imposing conditions upon their right to enter the state.<sup>6</sup> Though the power to license implies the right to revoke, a state cannot, however, deprive a corporation of rights of property or contracts gained during its licensed activity, nor yet impair its own contract with the corporation.<sup>7</sup>

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<sup>3</sup> *Cole v. Fickett*, 95 Me. 265.

<sup>4</sup> *Glass v. Hulbert*, 102 Mass. 24; *Davis v. Ely*, 104 N. C. 16. See also *Petesht v. Hambach*, 48 Wis. 443.

<sup>5</sup> *Comstock v. Coon*, 135 Ind. 640. See 2 *Pomeroy, Eq. Jurisp.*, 3d ed., § 867 and note.

<sup>1</sup> See Beale, *Foreign Corp. Chap. VII.*

<sup>2</sup> *Bank of Augusta v. Earle*, 13 Pet. (U. S.) 519, 589.

<sup>3</sup> *Watts-Pierce Oil Co. v. Texas*, 177 U. S. 28.

<sup>4</sup> *Paul v. Virginia*, 8 Wall. (U. S.) 168.

<sup>5</sup> *Smyth v. Ames*, 169 U. S. 466, 522.

<sup>6</sup> *Philadelphia Fire Ass'n v. New York*, 119 U. S. 110.

<sup>7</sup> See *Bedford v. Eastern Building and Loan Ass'n*, 181 U. S. 227; *N. Y., Lake Erie, etc., Co. v. Pennsylvania*, 153 U. S. 628.

The only constitutional limitations upon the right to exclude would seem to be found in the commerce clause, in the right to issue letters patent, and in the omnibus clause, securing the power to enact all necessary laws to carry congressional power into execution. A corporation endowed with federal privileges or engaged in federal business cannot be controlled or regulated by state interference except in the exercise of local police regulations.<sup>8</sup> But by culling expressions from a number of Supreme Court decisions, Mr. Ware has succeeded in enumerating ten limitations. Some of them, based on merest *dicta*, are rejected by the writer. Two, however, merit consideration. One is based on a decision declaring unlawful the arrest of an engineer of a railroad which failed to take out a permit which by its terms became void upon appeal by the corporation, in any litigation, to the federal courts.<sup>9</sup> The generalization drawn, that the burden imposed on a corporation cannot involve the surrender of a right or privilege secured by the Constitution, leaves out of consideration a square holding, which still stands, that though an agreement not to sue in the federal courts is invalid, the state may make the breach of such agreement a ground for revocation of its license, thus giving the corporation the option of not seeking the federal courts or ceasing to do business in that state.<sup>10</sup> The court expressly declared that it could not concern itself with the motive or reasonableness of a state's terms, since the corporation had no constitutional right to do business in the state. Nevertheless, another decision<sup>11</sup> declaring unconstitutional a state provision giving a preference to domestic creditors of an insolvent foreign corporation is deemed, in conjunction with another *dictum*, as, perhaps, committing the Supreme Court to the doctrine that a state cannot exclude a foreign corporation without good reason or just cause. The soundness of the particular decision is, in the light of the vigorous dissent, highly questionable. But certainly it does not warrant, as the writer himself seems to surmise, the conclusion he seeks to draw. On the whole, the narrow, well-defined limitations upon a state's power over foreign corporations can hardly be said to be extended by recent decisions, — a result highly unlikely, whether desirable or not, in view of a want of constitutional justification of the impairment of state sovereignty.

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EFFECT OF APPOINTMENT OF RECEIVER ON STATE PRIORITY. — By the common law, the crown was a preferred creditor.<sup>1</sup> Its right of priority, however, was not absolute. It could not be enforced against assets the title to which the debtor had transferred to another before the suing out of the writ of extent (by which the crown's right was enforced), unless, of course, such transfer could be set aside for fraud. Thus it was held that an assignment in trust for the equal benefit of all creditors destroyed the

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<sup>8</sup> *Crutcher v. Kentucky*, 141 U. S. 47; *Stockton v. Baltimore & N. Y. R. Co.*, 32 Fed. Rep. 9.

<sup>9</sup> *Barron v. Burnside*, 121 U. S. 186.

<sup>10</sup> *Doyle v. Continental Insurance Co.*, 94 U. S. 535. See Beale, *Foreign Corp.* § 122.

<sup>11</sup> *Blake v. McClung*, 172 U. S. 239. See 12 HARV. L. REV. 429.

<sup>1</sup> *King v. Cotton*, Par. 112.